BLACKROCK®

December 5, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: RIN 1210-AB63; Annual Reporting and Disclosure, Room N-5655
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via email to: e-ORI@dol.gov; RIN 1210-AB63

Re: Proposed Revision of Annual Information Return/Reports (RIN 1210-AB63)

BlackRock, Inc. (together with its affiliates "BlackRock") respectfully submits its comments to the Department of Labor ("DoL")'s proposed changes to the Form 5500, Annual Return/Report of Employee Benefit Plan and the Form 5500-SF, Short Form Annual Return/Report Small Employee Benefit Plan and related reporting regulations (the "Proposal").[1] BlackRock supports the DoL's goal of improving and updating the Form 5500 reporting as well as its desire to harmonize the service provider fee reporting requirements with its final disclosure rules under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). However, the Proposal significantly increases the cost and burden on plans and their service providers. We question whether there are sufficient benefits to justify the increased regulatory burden, particularly with respect to small plans. As set out below, we urge the DoL to revise the Proposal to eliminate limited value provisions that are not practicable and to ensure that any additional detail requested is consistent with other regulatory regimes. We further urge the DoL to consider reducing the administrative burden on employers to encourage them to offer much needed retirement plans for employees.

A. Imposing Additional Burdens on Small Plans Will Create a Further Disincentive for Small Employers to Adopt Plans

One-third of private-sector employees work for employers with fewer than 100 employees, and an estimated 51-71% of those employees do not have access to a work-place retirement plan.[2] Roughly 55 million employees do not have access to employer-sponsored retirement programs.[3] Many small employers are reluctant to offer plans because of concerns regarding potential fiduciary liability as well as administrative complexity, burdens, and costs.[4] The Proposal significantly increases the burden/paperwork for small plans and creates a further

1 81 Fed. Reg. No. 140 at 47496 (July 21, 2016) and 81 Fed. Reg. No. 140 at 47534 (July 21, 2016).

2 *See Challenges and Prospects for Employees of Small Business,* Statement of Charles A. Jeszeck, Director Education, Workforce, and Income Security (July 16, 2013); GAO, Retirement Security, Testimony Before the Committee on Health, Education, Labor, and Pensions, US Senate (July 16, 2013) at 1, available at http://www.gao.gov/assets/660/655889.pdf.

3 David John and Gary Koenig, "Workplace Retirement Plans Will Help Workers Build Economic Security," AARP Public Policy Institute Fact Sheet 317 (October 2014), available at: http://www.aarp.org/content/dam/aarp/ppi/2014-10/aarp-workplace-retirement-plans-build-economic-security.pdf.

4 *See* BlackRock *ViewPoint*, Expanding Access to Retirement Savings for Small Business (November 2015), available at https://www.blackrock.com/corporate/en-us/literature/whitepaper/viewpoint-expanding-access-retirement-savings-november-2015.pdf ("BlackRock November 2015 *ViewPoint*").

incentive not to establish a plan. It may also cause small plan sponsors to decide to abandon their plans.

Small plans that are not eligible to file the Form 5500-SF (e.g., those with hard-to-value assets available as investment options) will be required to complete Schedule H (financial information) including Line 4(i) (a detailed schedule of assets) and Schedule C (service provider information). Even small plans that have simple investment portfolios will have to answer additional questions requiring categorization of the plan's investments. All small plans will be required to answer questions regarding plan participants, contributions, investment options and design and to attach the comparison chart required to be disclosed to participants and beneficiaries under the DoL's regulation at 29 C.F.R. 2550.404a-5.[5] Moreover, the Proposal requires electronic filing in a machine readable format, which will almost certainly require the small plan sponsor to hire and pay a service provider to complete the form.

BlackRock believes that the DoL should work to reduce the administrative burden on small employers to make it easier to establish and maintain an ERISA plan. Any increased administrative burden may cause a small employer to decline to set up a plan or to abandon a plan, perhaps even in favor of one of the state-run plans with respect to which the DoL recently provided regulatory relief from ERISA.[6] The reduced burdens on state-sponsored systems coupled with increased burdens under ERISA will serve to fuel regulatory arbitrage in favor of state systems. This will be detrimental to individuals working for small employers, who may either have no access to a plan or only access to a state-run plan with lower contribution limits.[7] Rather than increasing the burden of the Form 5500 reporting, we urge the DoL to simplify ERISA reporting and disclosures for small plans, including eliminating Form 5500 filings entirely for small defined contribution plans that offer only registered mutual funds, bank maintained collective funds, or index separate accounts as investment alternatives.[8]

B. Significant Increased Reporting Burden Is Not Justified by Purported Benefits

With respect to reporting for large plans, the Proposal generally moves in the right direction in updating the information requested on Schedule H to reflect current investment vehicles and practices. However, the revisions impose a significant additional compliance burden on large plans and BlackRock questions the necessity and utility of gathering some of the newly required information. In particular, part of the DoL's stated purpose is to facilitate research, including private sector research. There are already many not for profit and research organizations that collect and make available information through voluntary participation and completion of surveys. Further, we are skeptical that requiring detailed investment information in a specific machine readable format would "enable private sector data users to develop more individualized tools for employers to evaluate their retirement plans and for employees to

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5 We note that one of the challenges under the Conflict of Interest Rule is the broker's ability to obtain information regarding plan investment alternatives in a 401(k) plan and their costs that would facilitate assessment of whether rollover to an individual retirement account would be in the plan's best interests. The availability of this information on Form 5500 would provide an avenue, albeit not immediately, for brokers to obtain this type of information.

6 *See* 81 FR 59464 (August 30, 2016), available at https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees.

7 *See* BlackRock November 2015 *ViewPoint*.

8 *See* BlackRock November 2015 *ViewPoint*. Senators Collins and Warner also recently introduced legislation that would further simplify Form 5500 reporting. *See* S. 3307, 114th Cong. (2016) available at https://www.congress.gov/114/bills/s3307/BILLS-114s3307is.pdf.

manage their retirement savings."[9] The financial services industry has already developed and is continuing to develop increasingly sophisticated technologies to assist plan sponsors and participants. Firms and plans can work together to develop solutions that are customized for a particular plan's needs based on the latest available technology and thinking. In our view, mandating disclosure in a prescribed format risks stifling some of these initiatives, as plans are required to bear the cost of providing information in a certain format and may be reluctant to take advantage of more sophisticated technologies and services as they become available.

C. Changes to Schedule C

It is positive that the DoL has made efforts to harmonize Form 5500 Schedule C service provider reporting with the requirements of its regulation under Section 408(b)(2) of ERISA, 29 C.F.R. 2550.408b-2(c)(1) ("408(b)(2) Regulation"). In particular, we believe that it is helpful to limit the Form 5500 reporting obligation to only the same "covered" service providers to which the 408(b)(2) Regulation applies.[10]

However, for certain types of compensation, the elimination of the concept of "eligible indirect compensation" is problematic, as it is not reasonably practicable to provide an accurate dollar value or estimated dollar value of indirect compensation received by providers of asset management services. In particular, with respect to "soft dollars", "unbundling" the cost of execution and the value of research, financial and economic data, financial publications, analytical software and other market related data provided to investment managers through the use of soft dollars on a fund level basis is challenging, if not impossible, and would be unlikely to provide any meaningful information to plans. Given that research and execution services are bundled under the existing sell-side model, unbundling is impractical and would require significant changes by broker-dealers. Moreover, soft dollars are not considered or used on a client by client basis. Rather, they are aggregated and used for both proprietary and third-party services for a group of clients that follow the same or similar strategy or whose assets are managed by a particular portfolio manager. Further, the bulk of what an asset manager receives in the form of soft dollars is information and the benefit of that information is intangible. By its very nature, it is inherently problematic to separate this intangible information into groupings that are fair and reasonable and to determine the value to a particular client. And, even if BlackRock developed what it determined was a fair and reasonable methodology, other asset managers may have a different approach. It is unclear what benefit or insight a plan will receive, if any, by disclosure of a dollar amount calculated by an asset manager, as the amount attributable a particular plan's "allocation" of soft dollar payments. Rather, we believe that the existence of the soft dollar payments and a description of an asset manager's soft dollar policies and procedures will provide more meaningful disclosure than a theoretically derived dollar allocation. This approach is consistent with Securities and Exchange Commission ("SEC") requirements. In sum, providing dollar amounts on a client by client basis attributable to soft dollar payments would be time consuming and burdensome, would not provide an accurate estimate of amounts attributable to a particular plan, and is unlikely to be particularly useful.

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9 *See* Fact Sheet, Proposal to Modernize and Improve the Form 5500 Annual Return/Report Filed By Employee Benefit Plans, U.S. Department of Labor (July 11, 2016) at 3.

10 It would be helpful if the DoL would confirm that Form 5500, Schedule C reporting is not required for management fees paid by a registered investment company to its advisor. The proposal expressly states that "[a] 'covered service provider' for Schedule C reporting has the same meaning as 'covered service provider' in 29 C.F.R. 2550.408b-2(c)." However, in continuing -- and in contrast with the 408(b)(2) Regulation -- the Proposed Form 5500 Schedule C rules do not specifically refer to services provided **directly** by an investment adviser registered under the Investment Advisor's Act of 1940. *See* 81 Fed. Reg. 140, at 47615.

D. Changes to Schedule H and Line 4i(1) Schedule of Assets

Although we agree that the information required in Schedule H should be updated, we believe that, without modification, the costs of the additional data threaten to outweigh the benefits. In particular, the definitions of some of the categories are vague and ambiguous, and the additional granularity may unnecessarily increase burdens and costs to the extent the DoL's categories vary from those applicable to other reporting regimes. For example, the Proposal defines "hedge funds" as pooled investment vehicles that are privately organized and administered by professional managers who engage in active trading of various types of securities, commodity futures, option contracts, and other investment vehicles, including relatively illiquid and hard-to-value investments. This definition is unclear and could be read as overlapping with common or collective investment trusts ("CCTs"), "limited partnerships", "venture capital operating companies", and "private equity." Likewise, the term "derivatives", is broadly defined. We believe that the definitions for these breakout categories should be made consistent with how those terms are defined by the Commodity Futures Trading Commission, SEC and the Financial Industry Regulatory Authority. The DoL should also ensure that these terms are defined consistently with how they are used in audited financial statements. This would facilitate consistent reporting among regulators and ease the compliance burdens for plans and direct filing entities ("DFEs").

BlackRock also urges the DoL to more specifically define hard-to-value assets for purposes of Line 4i in the Schedule of Assets. CCTs maintained and managed under Regulation 9.18 of the Office of the Comptroller of the Currency ("OCC"), which are often DFEs, are generally required to have their assets valued at mark-to-market value as of the CCT's valuation date, unless such a value cannot be readily ascertained, in which case the bank sponsoring the CCT must use a fair value determined by the bank in good faith. The definition of "hard-to-value assets"[11] set forth in the Proposal differs from the OCC fair valuation requirement, which would likely increase the burden on CCTs that are filing Forms 5500 as DFEs. Furthermore, the definition is not necessarily consistent with the framework for measuring fair value set forth in Financial Accounting Standards Board Accounting Standards Codification (ASC) 820-10, Fair Value Measurements and Disclosures, which is typically used by CCT sponsors to value assets held within CCTs and is applied and presented by the CCTs in annual audited financial statements.[12] Lastly, the Proposal requires CCTs that are invested primarily in hard-to-value assets to identify themselves as hard-to-value assets. This requirement may have the unintended consequence of unnecessarily impeding the use of CCTs as investment options for defined contribution plans, which may harm plan participants.

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[11] The Proposal defines hard-to-value assets as "assets that are not listed on any national exchanges or over-the-counter markets, or for which quoted market prices are not available from sources such as financial publications, the exchanges or the National Association of Securities Dealers Automated Quotations System (NASDAQ)." 81 Fed. Reg. No. 140 at 47544.

[12] ASC 820-10-35-37: To increase consistency and comparability in fair value measurements and related disclosures, this topic establishes a fair value hierarchy that categorizes into three levels the inputs to valuation techniques used to measure fair value. The fair value hierarchy gives the highest priority to quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1 inputs) and the lowest priority to unobservable inputs (Level 3 inputs).

BlackRock appreciates the DoL's effort to modernize the Form 5500 reporting regime; however, we strongly urge the DoL to revise the Proposal to reduce the administrative burden, particularly on small plans, and to improve clarity and ensure consistency with other regulatory regimes.

Sincerely,

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